IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6721 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MUKESH @ LALO @ MAHESH MOHANBHAI MACHHI THR'BROTHER

Versus

COMMISSIONER OF POLICE VADODARA CITY

Appearance:

MS BANNA S DUTTA for Petitioner

MR IM PANDYA AGP for Respondents

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 04/05/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226 of the Constitution of India has been filed by the detenu through his brother challenging his detention in

pursuance of the order passed against him by Police Commissioner, Baroda City, on 23rd of September, 2004, in exercise of powers conferred upon him under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short). The detenu is under detention as bootlegger from 24th of February, 2005 in pursuance of the above order.

2. The grounds of detention as placed on record reveal that the detaining authority took into consideration four crimes registered against the detenu for the breach of the provisions of the Bombay Prohibition Act. All the four crimes came to be registered against the detenu before City Police Station, Baroda, on 23rd of June, 2004, 19th of July, 2004, 10th of August, 2004 and on 26th of August, 2004. It was alleged that in each of these four cases that the detenu was found in possession of some quantity of prohibited liquor. The detaining authority thoroughly and exhaustively examined the investigation papers in all the four cases registered against the detenu and came to the conclusion that the detenu was dealing in storing, selling and transporting the prohibited liquor. The detaining authority came to the conclusion that the activities of the detenu were of bootlegging activities, within the meaning of PASA Act. The detaining authority came to the conclusion that the activities of the detenu were prejudicial to the maintenance of the public order and adversely affecting the public health. The detaining authority concluded that the bootlegging activities of the detenu were required to be prevented forthwith. The detaining authority came to the conclusion that to prevent the bootlegging activities of the detenu, there was no alternative, except to detain the detenu under the PASA Act. The detaining authority, therefore, after taking into consideration other remedial measures available under the general law, passed an order of detention of the detenu under the PASA Act, which is under challenged in this petition.

3. Learned advocate Ms. Banna Dutta for the detenu and learned AGP Mr.I.M.Pandya for the respondents were heard at length.

4. Out of various grounds urged on behalf of the detenu and opposed and controverted by learned AGP, it appears that this petition can be examined and disposed of on the sole issue that whether there was credible material placed before the detaining authority to come to the conclusion that by the activities of the detenu the public order was disturbed and public health was

adversely affected.

5. To arrive at the subjective satisfaction that bootlegging activities of the detenu were prejudicial to the maintenance of public order and public health, the detaining authority must rely upon credible and cogent material indicating that the activities of the detenu directly or indirectly were causing or were likely to cause any harm, danger or alarm or feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life, property or the public health. In this exercise, the detaining authority must draw a line between the cases falling under "breach of law and order" and breach of public order. The fall out, reach and impact of the activities of the detenu determines whether potentiality of the activities alleged was capable of disturbing the public order. When reach and impact of the activities are so grave, as to affect larger section of society and when widespread danger to life, property or the public health is likely, the activities can be branded as activity affecting the public order. The other cases are cases falling within the scope of breach of law and order, and can be taken care of by the general law. Referring to the four cases under the Prohibition Act filed against the detenu, and going through the investigating papers, it appears that those cases came to be filed against the detenu because he was found in possession of some prohibited country liquor in breach of Prohibition Act. Those cases are pending and the detenu shall be tried and may be punished as well, if found guilty, but it is clear that through the investigating papers, which is the basic material, on which the detaining authority has placed reliance and has formed opinion, do not disclose the impact of activities of the detenu disturbing the larger section of the society. At the most, these cases may be considered to be breach of law, for which, as aforesaid, the detenu will be dealt with according to law. Therefore, the act constituting criminal offences registered against the detenu in dealing with country liquor, have no bearing at all on the question of maintenance of public order. In this view of the matter, the subjective satisfaction arrived at by the detaining authority based on the above material in respect of maintenance of public order is not legal, valid and in accordance with law. The order under challenge, therefore, is required to be quashed on this ground alone.

6. In the result, the petition is allowed. The order passed by the Police Commissioner, Baroda City on 23rd of September, 2004, against the detenu in exercise

of powers under Section 3(1) of the PASA Act is hereby quashed and set aside. The detenu - Mukesh alias Lalo alias Mahesh Mohanbhai Machhi is hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule is made absolute. Direct service is permitted.

[J. R. VORA,J.]

p.n.nair